

## The Potential and Pitfalls of Comparative Sentencing Research



Scottish  
Sentencing  
Council



### Scotland and England & Wales: Separate But Comparable?

Although media reports often seek to do so, making direct comparisons between the two jurisdictions of Scotland, and England and Wales is fraught with difficulty.

### Surprisingly Little Funding of Direct Comparative Research

Despite the relative similarity of the two jurisdictions, to date, there has been surprisingly little funding of criminal justice research *directly* comparing Scotland and England and Wales – even less so sentencing in particular.

Without comparative research employing a single methodology common to both jurisdictions, one has to rely on trying to infer comparisons from individual, ad hoc studies in each of the two jurisdictions, and where each study has employed a different research methodology.

### Our Report

To help to understand these issues more fully, I was commissioned by the Scottish Sentencing Council to lead a team of experts from the Universities of Strathclyde, Oxford, and Leeds to examine the methodological issues in comparing sentencing in the two jurisdictions.

Our [report](#) confronts issues in making valid comparisons between the two jurisdictions, including:

- the challenges of measuring punitiveness in different jurisdictions;
- criminal justice cultures;
- the different sentencing disposals in Scotland and in England and Wales;
- public confidence in the two jurisdictions;
- comparing responses to specific kinds of offences (e.g. rape and causing death by driving offences).

### **Making Valid Comparisons in the Uses of Prison Sentencing**

To take just one issue, comparing sentence types is not as simple as media reports might suggest.

For instance, it might be assumed that the percentage of cases receiving a custodial sentence for certain offences can be derived by including the suspended sentence order (which exists in England and Wales) as a prison sentence. The technical label of ‘custodial’ attached to the SSO should not be misunderstood as immediate imprisonment. Doing so and counting SSOs as prison sentences would give a false impression that England and Wales is far more punitive than Scotland for similar offences. In our report we explain why the SSO should be considered roughly equivalent to the community payback order (CPO) in Scotland.

### **The Potential Benefits of Direct Comparative Sentencing Research**

The paucity of funding for direct comparative work is unfortunate as comparative work could significantly benefit the development of sentencing research and policy in both jurisdictions. For instance, it would be of immediate practical benefit to address at least the following two issues:

#### *1. The relative effectiveness of different sanctions.*

Where the sanctions are sufficiently similar in both jurisdictions, comparative research would be beneficial. For example, as we explain in our report, the community order (in England and Wales) and the community payback order (in Scotland) are broadly comparable. Research evidence on the effectiveness of various requirements associated with these sanctions would enable one country to learn more easily from the other.

#### *2. Public attitudes to and knowledge of sentencing.*

Public attitudes in the two jurisdictions are eminently comparable. Currently, however, it is difficult to make definitive comparisons from individual studies (each with their own methodologies and conducted at different times) in the two jurisdictions.

Research dedicated to such comparisons would employ a common methodology so as to examine simultaneously perceptions of and attitudes about sentencing in both jurisdictions. This could cover both general attitudes (e.g. to the aims of sentencing) as well as similar specific offences and sanctions. Such research could help to address the longstanding difficulty in improving public knowledge of, and

confidence in, sentencing. However, it would also enable the development and direction of sentencing guidelines and policy to be more accurately informed by any differences (or similarities) between public attitudes in the two jurisdictions.

By answering these question Scotland, and England and Wales, can each be in a better position to inform public discussion about sentencing and penal policy and practices. Ultimately, the goal should be to contribute not only to more evidence-based policy, but also to facilitate greater public understanding and confidence in sentencing.

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Prof Tata, together with Prof Julian Roberts (University of Oxford), Dr Jay Gormley (University of Strathclyde), Dr Jose Pina-Sánchez and Ana Veiga (University of Leeds). Their report is entitled: *The Methodological Challenges of Comparative Sentencing Research* and is published by the Scottish Sentencing Council.

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